

general denial, in which case the respondent may thereafter amend the answer to assert affirmative defenses only by leave of the Board and as otherwise prescribed by paragraph (f) of this section. The Board will inform the parties when it enters a general denial on behalf of the respondent.

(d) *Reply to an answer.* If the Board orders or permits a reply to an answer, it shall be filed as directed by the Board.

(e) *Modifications to requirement for pleadings.* If the appellant has elected the small claims procedure provided by 6102.2 or the accelerated procedure provided by 6102.3, the submission of pleadings shall be governed by the applicable section.

(f) *Amendment of pleadings.* Each party to an appeal may amend its pleadings once without leave of the Board at any time before a responsive pleading is filed; if the pleading is one to which no responsive pleading is permitted, such amendment may be made at any time within 20 calendar days after it is served or, in small claims proceedings under 6102.2, within 10 working days after it is served. The Board may permit the parties to amend pleadings further on conditions fair to both parties. If a response to the unamended pleading was required by the rules in this part or by an order of the Board, a response to the amended pleading shall be filed no later than 30 calendar days after the filing of the amended pleading or, in small claims proceedings, no later than 15 calendar days after the filing of the amended pleading. 6101.12(e) concerns amendments to pleadings to conform to the evidence.

6101.8 Motions [Rule 108].

(a) *How motions are made.* Motions may be oral or written. A written motion shall indicate the relief sought and, either in the text of the motion or in an accompanying legal memorandum, the grounds therefor. In addition, a motion for summary relief shall comply with the requirements of paragraph (g) of this section. 6101.25 prescribes the form and content of legal memoranda. Oral motions shall be made on the record and in the presence of the other party.

(b) *When motions may be made.* A motion filed in lieu of an answer pursuant to 6101.7(c) shall be filed no later than the date on which the answer is required to be filed or such later date as may be established by the Board. Any other dispositive motion shall be made as soon as practicable after the grounds therefor are known. Any other motion shall be made promptly or as required by this part.

(c) *Dispositive motions.* The following dispositive motions may properly be made before the Board:

(1) Motions to dismiss for lack of jurisdiction or for failure to state a claim upon which relief can be granted;

(2) Motions to dismiss for failure to prosecute;

(3) Motions for summary relief (analogous to summary judgment); and

(4) Any other motion to dismiss.

(d) *Other motions.* Other motions may be made in good faith and in proper form.

(e) *Jurisdictional questions.* The Board may at any time consider the issue of its jurisdiction to decide a case. When all facts touching upon the Board's jurisdiction are not to record, or in other appropriate circumstances, a decision on a jurisdictional question may be deferred pending a hearing on the merits or the filing of record submissions.

(f) *Procedure.* Unless otherwise directed by the Board, a party may respond to a written motion other than a motion pursuant to 6101.30, 6101.31, 6101.32, or 6101.33 at any time within 20 calendar days after the filing of the motion. Responses to motions pursuant to 6101.30, 6101.31, 6101.32, or 6101.33 may be made only as permitted or directed by the Board. The Board may permit hearing or oral argument on written motions and may require additional submissions from any of the parties.

(g) *Motions for summary relief.* (1) A motion for summary relief should be filed only when a party believes that, based upon uncontested material facts, it is entitled to relief in whole or in part as a matter of law. A motion for summary relief should be filed as soon as feasible, to allow the Board to rule on the motion in advance of a scheduled hearing date.

(2) With each motion for summary relief, there shall be served and filed a

separate document titled Statement of Uncontested Facts, which shall contain in separately numbered paragraphs all of the material facts upon which the moving party bases its motion and as to which it contends there is no genuine issue. This statement shall include references to the supporting affidavits or declarations and documents, if any, and to the 6101.4 appeal file exhibits relied upon to support such statement.

(3) An opposing party shall file with its opposition (or cross-motion) a separate document titled Statement of Genuine Issues. This document shall identify, by reference to specific paragraph numbers in the moving party's Statement of Uncontested Facts, those facts as to which the opposing party claims there is a genuine issue necessary to be litigated. An opposing party shall state the precise nature of its disagreement and give its version of the facts. This statement shall include references to the supporting affidavits or declarations and documents, if any, and to the 6101.4 appeal file exhibits that demonstrate the existence of a genuine dispute. An opposing party may also file a Statement of Uncontested Facts as to any relevant matters not covered by the moving party's statement.

(4) When a motion for summary relief is made and supported as provided in this section, an opposing party may not rest upon the mere allegations or denials of its pleadings, but the opposing party's response, by affidavits or as otherwise provided by this section, must set forth specific facts showing that there is a genuine issue of material fact. If the opposing party does not so respond, summary relief, if appropriate, shall be entered against that party. For good cause shown, if an opposing party cannot present facts essential to justify its opposition, the Board may defer ruling on the motion to permit affidavits to be obtained or depositions to be taken or other discovery to be conducted, or may make such other order as is just.

(h) *Effect of pending motion.* Except as this part and part 6102 provide or the Board may order, a pending motion shall not excuse the parties from proceeding with the case in accordance

with this part and part 6102 and the orders and directions of the Board.

6101.9 Election of hearing or record submission [Rule 109].

Each party shall inform the Board, in writing, whether it elects a hearing or submission of its case on the record pursuant to 6101.11. Such an election may be filed at any time unless a time for filing is prescribed by the Board. A party electing to submit its case on the record pursuant to 6101.11 may also elect to appear at a hearing solely to cross-examine any witness presented by the opposing party, provided that the Board is informed of that party's intention within 10 working days of its receipt of notice of the election of hearing by the other party. If a hearing is elected, the election should state where and when the electing party desires the hearing to be held and should explain the reasons for its choices. A hearing will be held if either party elects one. If a party's decision whether to elect a hearing is dependent upon the intentions of the other party, it shall consult with the other party before filing its election. If there is to be a hearing, it will be held at a time and place prescribed by the Board after consultation with the party or parties electing the hearing. The record submissions from a party that has elected to submit its case on the record shall be due as provided in 6101.11.

6101.10 Conferences; conference memorandum; prehearing order; prehearing and presubmission briefs [Rule 110].

(a) *Conferences.* The Board may convene the parties in conference, either by telephone or in person, for any purpose. The conference may be stenographically or electronically recorded, at the discretion of the Board. Matters to be considered and actions to be taken at a conference may include:

(1) Simplifying, clarifying, or severing the issues;

(2) Stipulations, admissions, agreements, and rulings to govern the admissibility of evidence, understandings on matters already of record, or other similar means of avoiding unnecessary proof;